

PT 03-15

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
SPRINGFIELD, ILLINOIS**

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**PECATONICA HERITAGE MUSEUM**

**v.**

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

**A.H. DOCKET # 00-PT-0041**

**DOCKET # 99-101-140**

**P.I. # 460B-175B**

**Barbara S. Rowe  
Administrative Law Judge**

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. Kent R. Steinkamp, Special Assistant Attorney General for the Illinois Department of Revenue.

**Synopsis:**

The hearing in this matter was held to determine whether Winnebago County Parcel Index No. 460B-175B qualified for exemption during the 1999 assessment year. Ms. Mary L. Mohaupt, president of the Pecatonica Heritage Museum (hereinafter referred to as the "Applicant") and Ms. Joan M. Cunningham, board member, were present and testified on behalf of the applicant.

The issue in this matter is whether the applicant used the parcel for exempt purposes during the 1999 assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be denied. In support thereof, I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

**FINDINGS OF FACT:**

1. The jurisdiction and position of the Department that Winnebago County Parcel Index No. 460B-175B did not qualify for a property tax exemption for the 1999 assessment year were established by the admission into evidence of State's Ex. No. 1. (Tr. p. 6)

2. The Department received the request for exemption of the subject parcel from the Winnebago County Board of Review. The board recommended granting the exemption. The specific activities that take place on the property according to the application are to preserve, develop, and operate a museum for displays and conducting charitable and educational programs. The Department denied the requested exemption finding that the property was not in exempt use. (State's Ex. No. 1)

3. The applicant acquired the subject parcel by a warranty deed dated May 22, 1997. Located on the subject parcel are three buildings. The first is a 2,250 square-foot four-story grain elevator with a basement. The second is a 770 square foot one-story building. The third is a 4,980 square-foot 1½-story warehouse building. (State's Ex. No. 1; Applicant's Ex. No. 4)

4. At the time the applicant acquired the property, a portion of it, located in the warehouse building, was leased for \$500.00 a year to the owner of an art gallery. Applicant accepted assignment of the lease on July 31, 1997. The lease is for five years and terminates on June 30, 2001. (Applicant's Ex. Nos. 1, 2, 4)

5. The leased art gallery space includes 1,325 square feet in the upper level of the warehouse and 1,112 square feet in the main level of the building. As part of the lease arrangement, the lessees agreed to be the caretakers for the property. (State's Ex. No. 1; Applicant's Ex. Nos. 2, 3; Tr. pp. 12-13)

6. The rest of the warehouse is either undeveloped space or is the community room/theatre. (State's Ex. No. 1)

7. The financial report of applicant's income for the period of December 1, 1998, through November 30, 1999, shows cash donations of \$12,788.58<sup>1</sup>, a miscellaneous deposit of \$2,016.66, fundraisers for \$3,140.61, and interest received of \$31.50 for total income of \$17,977.35. (Applicant's Ex. No. 1)

8. In 1999, applicant was in its third year of fund raising to save the old 18-bin granary. In addition, applicant's plans for the subject property include opening a welcome center, provide a rest area to the adjacent Pecatonica Prairie Path, restore the old doctor's apartment, and update the community room for use by the Pecatonica Playhouse, youth musicians, and other community events. (Applicant's Ex. No. 1)

9. Applicant submitted a time line of activities that took place on the subject property in 1999. The activities include: March 20 - benefit auction<sup>2</sup> and museum tours; April 22 - Pecatonica Playhouse Theatre<sup>3</sup>/Pecatonica High School production of "Arsenic and Old Lace" opens; May 18 - International Museum Day Display opens with "Lifting with their 'Legs'"<sup>4</sup> an on going HABS/HAER<sup>5</sup> elevator display; May 22 - rented out community room for Graduation Party (no documentation); May 28-31 - open for tours during Crooked River Days; June - PPT holds theatre camp for children; August 13 - PPT's production of "Oklahoma" opens, Rep. Dave Winters presents \$85,000<sup>6</sup> grant from the Illinois First program; October 22 - PPT production of "On Golden Pond" opens; November - Grafton Gallery purchases "Celebrity"

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<sup>1</sup> This amount includes the rental payment for a graduation party. The specific rental amount was not disclosed. (Tr. pp. 21-22) In addition the financial report does not disclose the category for the gallery rent.

<sup>2</sup> The auction was held in the theatre space. (Tr. p. 22)

<sup>3</sup> hereinafter referred to as "PPT".

<sup>4</sup> Lifting with their "legs" is an exhibit which features more than a dozen Northern Illinois grain elevators as documented in the photographs and measured drawings of HABS/HAER. (Applicant's Ex. No. 1)

<sup>5</sup> HABS/HAER is the acronym for the Historic American Buildings Survey/Historic American Engineering Record Collections, Library of Congress in Washington, D.C..

<sup>6</sup> This amount was not reflected in applicant's financial report because applicant did not physically receive the grant until 2000. (Tr. pp. 27-28) The funds are to be used for a new roof for the museum and the construction of a welcome center. (Applicant's Ex. No. 1 p. 24)

tablecloth from charity auction<sup>7</sup>; December 3 - PPT production of “My Three Angels” opens; December 4 - museum open for tours during “Christmas Walk” (no documentation regarding this event was provided). (Applicant’s Ex. No. 1)

10. If the Pecatonica Playhouse Theatre made a profit on a show, applicant received ten percent. There was no rental charge for the use of the Community room/theatre area of the building. (Tr. p. 20)

11. Applicant was incorporated under the Illinois General Not for Profit Corporation Act on December 3, 1996. The corporation is organized for charitable and educational purposes and shall have all powers necessary or convenient to carry out its purposes, including the powers enumerated in the Illinois Not-for-Profit Corporation Act. (Applicant’s Ex. No. 4)

12. Applicant is exempt from the payment of federal income tax pursuant to a finding by the Internal Revenue Service that it is a charitable organization under section 501(c)(3) of the Internal Revenue Code. (Applicant’s Ex. No. 4)

13. In 1999, applicant’s membership was made up of no more than seven dedicated individuals. (Tr. pp. 30-32)

14. Applicant was informed that it had the right to be represented by counsel. They chose to proceed *pro se*. (Tr. p. 10)

15. Applicant did not obtain resolutions from the taxing districts stating that it was a charitable organization. (Tr. pp. 24-26)

### **CONCLUSIONS OF LAW:**

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

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<sup>7</sup> The auction was held at an artists’ conference in Salt Lake City and did not occur on the subject property.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992)

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1944). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967)

Pursuant to the constitutional grant of authority, the legislature has enacted provisions for property tax exemptions. At issue is the provision found at 35 ILCS 200/15-65, which exempts certain property from taxation in 1999. It states as follows:

All property of the following is exempt when actually and exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit: . . .

(f) An Historical society, but only if all taxing districts within which the property is situated have adopted a resolution finding that the society is a charitable organization using the property exclusively for charitable purposes.

Here, the appropriate exemption applies to "institutions of public charity." Our courts have long refused to apply this exemption absent suitable evidence that the property in question is owned by an "institution of public charity" and "exclusively used" for purposes which qualify as "charitable" within the meaning of Illinois law. Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149, 156 (1968) (hereinafter "Methodist Old Peoples Home"). They have also ascribed to the following definition of "charity" originally articulated in Crerar v. Williams, 145 Ill. 625, 643 (1893):

... a charity is a gift to be applied consistently with existing laws, for the benefit of an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare - or in some way reducing the burdens of government.

The Illinois Supreme Court has effectuated this definition by observing that all "institutions of public charity" share the following distinctive characteristics:

The organization:

- 1) must benefit an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare-or in some way reduce the burdens of government;
- 2) must have no capital, capital stock, or shareholders and earn no profits or dividends;
- 3) must derive its funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters;
- 4) must dispense charity to all that need and apply for it, and must not provide gain or profit in a private sense to any person connected with it; and,
- 5) must not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits dispensed; and
- 6) the term "exclusively used" means the primary purpose for which the property is used and not any secondary or incidental purpose. Methodist Old Peoples Home at 157.

Although the criteria cited in Methodist Old Peoples Home are not an exclusive rigid formula, they are guidelines that help to analyze whether an applicant is a charitable organization. Du Page Co. Bd. of Rev. v. Joint Comm'n, 274 Ill.App.3d 461 (2<sup>nd</sup> Dist. 1995) (*leave to appeal denied*, 164 Ill.2d 561)

The Illinois Supreme Court in Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971) stated that it is the primary use of property, rather than any incidental use, that determines whether a parcel will be granted a property tax exemption.

Applicant lists in its time line for 1999 only a maximum of seven days of events held on the subject property that possibly could be classified as museum use and related to charity. Of those seven days, applicant asserts that it conducted tours during the four days of the Crooked River Days, but supplied no documentation of how many, if any, tours were given. There is no documentation addressing whether applicant charged for the tours. The benefit auction and museum tours on March 20<sup>th</sup> again have no documentation of how many, if any, tours were given and if there were charges associated with the event. The plays put on by Pecatonica Playhouse Theatre cannot qualify for exemption in this instance, as there is no documentation that they are charitable or museum events. In fact, applicant is entitled to 10% of any profit made on a show. Applicant admits that the only specific museum use of the theatre space occurred on March 20, 1999, when applicant conducted its benefit auction.<sup>8</sup>

Applicant has additional plans for the property in the future, but it unclear whether those uses will qualify as charitable. Applicant's income section of its financial report for the period in question is broken into four sections: "Cash donations, Misc. Deposit, Fund Raisers, and Interest Re'd." It is unclear what activities are associated with the amounts listed in each category.

Applicant admits that a portion of the warehouse is rented for \$500 per year. In Turnverein "Lincoln" v. Bd of Appeals, 358 Ill. 135 (1934), the Illinois Supreme Court, citing People v. Withers Home, 312 Ill. 136, stated "that if property, however owned, is let for return, it is used for profit and so far as its liability to the burden of taxation is concerned, it is immaterial whether the owner actually makes a profit or sustains a loss." *Id.* at 144 . *See also* Salvation Army v. Dep't of Revenue, 170 Ill.App.3d 336 (2<sup>nd</sup> Dist. 1988) *leave to appeal denied* and City of Mattoon v. Graham, 386 Ill. 180 (1944).

Applicant also failed to obtain the resolutions required under 35 ILCS 200/15-65 from the taxing districts declaring that applicant is a charitable organization.

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<sup>8</sup> Tr. p. 22

The burden is on the applicant to establish that the primary use of the subject property was charitable as contemplated by the statutes and case law in Illinois. The applicant has failed to do so. It is therefore recommended that Winnebago County Parcel Index No. 460B-175B remain on the tax rolls for the 1999 assessment year.

Respectfully Submitted,

Barbara S. Rowe  
Administrative Law Judge  
Date: May 30, 2003